

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESUS DANIEL HERNANDEZ,

Plaintiff,

v.

Civ. No. 02-0622 RLP/LAM

CITY OF ALBUQUERQUE, d/b/a
Albuquerque Police Department and
Bernalillo County Detention Center, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on Defendants' Motion for Partial Summary Judgment on Claims Against the Bernalillo County Detention Center. This is an action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges, *inter alia*, that he was wrongfully detained at the Bernalillo County Detention Center ("BCDC") because authorities held up his release paperwork for two days in violation of his civil rights. Amended Complaint, ¶¶ 26-33 (Count I). Defendants filed their motion for partial summary judgment, to which Plaintiff did not file a response. After a review of the Motion and the evidence submitted, the court finds that the Motion shall be granted.

Summary judgment is appropriate when there are no disputed facts and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. A party's failure to file a response does not mean that summary judgment will automatically be granted, but it does mean that he concedes the factual issues presented. *See Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002). The court must still determine whether the moving party has met its burden that it is entitled to judgment as a matter of law. *Id.*

In support of their Motion, Defendants state that Plaintiff was arrested on July 29, 2000 and released on August 2, 2000. At that time, authorities could not release a prisoner without a release order. N.M.S.A. (1978) § 33-3-12(B). The release order in this case was filed and dated August 2, 2000; Plaintiff posted bond on that date; and Plaintiff was released from BCDC on that date. Defendants point out that in his deposition, Plaintiff believed he should have been released on July 29, but has not facts to support his belief.

The court finds that Defendants' have properly supported their Motion with evidence and Plaintiff's failure to come forward with factual evidence to support his version of events indicates there are no genuine issues of disputed and material facts. Therefore, Defendant BCDC is entitled to judgment as a matter of law on Count I. Count I will therefore be dismissed and, because this is the only claim against BCDC, it too will be dismissed from this lawsuit.

IT IS THEREFORE ORDERED ADJUDGED and DECREED that Defendants' Motion for Partial Summary Judgment on Claims Against the Bernalillo County Detention Center [Doc. 50] is granted and that Count I of the Amended Complaint [Doc. 6] and Defendant Bernalillo County Detention Center are dismissed with prejudice.

IT IS SO ORDERED.


Richard L. Puglisi, United States Magistrate Judge

For the Plaintiff: Dennis Montoya, Esq.
For the Defendant: Jeffrey Baker, Esq.